BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MURRAY UDELL RUTLEDGE, III	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,018,844
PREMIER PAINTING COMPANY	)	
Respondent	)	
AND	)	
	)	
CONTINENTAL WESTERN INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appeals the March 28, 2006 Preliminary Decision of Administrative Law Judge Robert H. Foerschler. Claimant was denied benefits in the form of additional medical treatment after the Administrative Law Judge (ALJ) determined it was not clear what added treatment would be effective in relieving claimant's injuries. The ALJ also determined it not prudent to order treatment in Colorado where claimant currently resides. The ALJ did offer that an examination and treatment by a local experienced specialist might be considered, but this was not ordered.

ISSUES

Did the ALJ exceed his jurisdiction in denying claimant additional medical treatment after finding that claimant was an employee of respondent and not an independent contractor and that claimant had suffered an accidental injury which arose out of and in the course of his employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that this matter should be remanded to the ALJ for clarification.

Claimant alleges accidental injury arising out of and in the course of his employment on April 19, 2004, when he allegedly fell from a ladder, injuring his right foot and ankle. The ALJ found that claimant had proven that he suffered an accident which arose out of and in the course of his employment and that claimant was an employee for preliminary purposes. However, the ALJ then denied claimant additional medical treatment for the alleged injuries, finding:

> It does not appear that any relief can be ordered at this stage of the proceedings. That he was an employee, despite respondent's objection, is now probably right, from the evidence so far. But he now resides and is employed in Colorado and what additional treatment would be effective in relieving the injuries [sic] effects is not clear. It is not considered prudent to order treatment in Colorado by an unfamiliar provider at this time. An examination and treatment by a local experienced specialist might be considered if the parties can agree on one, but otherwise no relief can be offered at this time.[1]

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?

2. Did the injury arise out of and in the course of employment?

3. Did the worker provide timely notice and written claim of the accidental injury?

4. Is there any defense that goes to the compensability of the claim?[2]

It is clear neither K.S.A. 44-534a nor K.S.A. 44-510k limit an administrative law judge's ability to make determinations of ongoing disputed issues regarding pre- or post-award medical care.

The denial of medical benefits in this instance is due either to the ALJ's determination that additional treatment would not be effective or because claimant now resides in Colorado, or both. K.S.A. 44-534a makes it the administrative law judge's responsibility to award or deny medical care from preliminary hearings. To do so is clearly

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[1] Preliminary Decision at 1-2.

[2] K.S.A. 44-534a(a)(2).

within the administrative law judge's jurisdiction. In this instance, it is not clear whether the ALJ denied the request for medical care because it was not needed or because of claimant's location. However, it is certain that the ALJ had the jurisdiction to make the determination regarding claimant's need for medical care.

> Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.[3]

However, if the decision was made based upon claimant's location, the denial of benefits would not be appropriate. Administrative law judges across the state and the Board have ordered medical care with health care providers in other states many times, when appropriate. For an administrative law judge to deny medical care based purely on the claimant's location would exceed his or her jurisdiction. The Board cannot determine, from this order, whether the ALJ denied claimant medical care due to his location or his condition. One decision would be appropriate and one not. Likewise, one decision would deny the Board jurisdiction to review the order and one would not. As the Board is unable to determine the rationale behind the ALJ's decision, it is necessary to remand this matter to the ALJ for clarification. The Board does not retain jurisdiction of this matter. If any party desires to appeal any subsequent decisions by the ALJ, the appropriate applications must be filed with the Director.

As is always the case, these findings are not binding upon a full hearing on the claim but shall be subject to a full presentation of the facts.[4]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of claimant in the above matter should be dismissed and that this matter be remanded to Administrative Law Judge Robert H. Foerschler for clarification.

IT IS SO ORDERED.

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[3] *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

[4] K.S.A. 44-534a(a)(2).

Dated this ____ day of June, 2006.

BOARD MEMBER

c: J. Scott Gordon, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director